



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

AUG 5 2004

A-18J

Lloyd Eagan, Director
Bureau of Air Management
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707


Dear Ms. Eagan *Lloyd*,

The United States Environmental Protection Agency (USEPA) has reviewed Wisconsin Act 118, published February 5, 2004, and effective February 6, 2004. This Act affects provisions of Wisconsin's Statutes, including Chapter 285, Air Pollution. Act 118 makes various changes relating to the administrative procedures for how the Wisconsin Department of Natural Resources (WDNR) will process air pollution control permits. These changes include new processing time frames and new permits types such as registration and general permits, among other changes.

It's our understanding that Wisconsin will adopt regulations or changes to existing regulations to implement some provisions of Act 118, and will immediately begin to directly implement other provisions of this Act. Therefore, USEPA is notifying WDNR of our concerns with certain provisions of Act 118. We expect Wisconsin to promulgate regulations that are consistent with the Clean Air Act where possible, or otherwise either amend Act 118 to remove the objectionable provisions, or provide us with an Attorney General opinion that these provisions do not in any way prevent WDNR from fully implementing and enforcing its Title V program. Unilateral State implementation of certain provisions could result in deficiencies in Wisconsin's Title V program as well as impact Wisconsin's authority to fully implement its approved Title V and New Source Review programs.

Thank you very much for your attention to these concerns. If you have any questions regarding these issues please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Steve Rothblatt". The signature is stylized with a large, sweeping "S" and "R".

Stephen Rothblatt, Director
Air and Radiation Division

Enclosure

Issues Raised by Wisconsin's Act 118

- 1.) 285.17(2)(b) prevents WDNR from imposing monitoring requirements in a Title V permit if, upon request of the permittee, the WDNR Secretary determines that the monitoring is "unreasonable." The WDNR Secretary is required to consider, among other factors, whether similar requirements have been imposed on similar sources. However, Title V requires permitting authorities to include in a Title V permit all requirements applicable to a source, including monitoring, regardless of what requirements apply to other similar sources.
- 2.) 285.60(2g) provides for the use of "registration" permits to authorize construction, operation, or both for sources with low actual or potential emissions. It isn't clear from what we have available to review what sources might be eligible for registration permits or whether they are consistent with the requirements of New Source Review and Title V.
- 3.) 285.60(3) authorizes WDNR to issue general operation or construction permits to similar stationary sources. It isn't clear what types of sources would be eligible for general permits or whether these permits are consistent with New Source Review and Title V requirements.
- 4.) 285.60(5m) allows persons to commence construction or modification of stationary sources prior to issuance of a construction permit if the person shows that commencing construction is "necessary to avoid undue hardship." The Clean Air Act and New Source Review regulations don't provide for any waiver from the requirement to obtain a permit before commencing construction.
- 5.) Section 285.60(6) exempts minor sources from the requirement to obtain construction and operating permits if the emissions from the sources do not present "a significant hazard to public health, safety or welfare or to the environment." This is contrary to section 110(a)(2)(c) of the Clean Air Act, which requires the regulation of the construction and modification of any stationary source as necessary to assure that the NAAQS are achieved, and to Title V which can apply to minor sources if they are subject to requirements under sections 111 or 112(r) of the Act or if they belong to a source category identified under 40 C.F.R. § 70.3 by the Administrator as being subject to Title V.
- 6.) 285.60(9) provides that WDNR must respond within 30 days to a petition to determine that a type of source meets the criteria for a registration or general permit. It isn't clear whether there are ramifications if WDNR fails to meet this deadline. Also, if WDNR determines that the source is eligible for a registration or general permit, Act 118 doesn't provide WDNR any discretion to deny the registration or general permit for other reasons.
- 7.) 285.60(10) provides that WDNR must implement measures to "allow timely installation and operation of equipment and processes and the pursuit of related economic activity by lessening [permitting] obligations." This includes expanding the use of construction permit waivers and exemptions and the use of registration and general permits. This appears to be inconsistent with permitting requirements of the Clean Air Act.

8.) 285.61(3)(a) provides that the department must prepare an analysis regarding the effect of a proposed major source construction permit on ambient air quality and a preliminary determination on the approvability of the permit application within 90 days after the application is considered complete. It isn't clear whether this means that the department must complete a draft construction permit within this timeframe, or what the ramifications are for the department's failure to comply with this requirement.

9.) 285.61(7)(a) provides that requests for a hearing be granted only if the person requesting the hearing is "affected by the issuance of the permit." 40 C.F.R. 70.7(h) does not place any limitations on persons that can request a hearing. This section of Act 118 places a higher burden on a person seeking a public hearing than the person would have under Title V.

10.) 285.62(7)(b) provides that WDNR must issue an operating permit 180 days after the application is considered complete or after the applicant submits the results of all testing and monitoring required under the construction permit, whichever is later. It isn't clear what the ramifications are of WDNR's failure to meet this deadline.

11.) 285.66(2)(b) allows WDNR to include an expiration date in a general permit. If WDNR issues a general permit in place of a construction permit, this may be contrary to New Source Review requirements.